Kerajaan Negeri Selangor & Ors v Pendaftar Pertubuhan Malaysia and another suit

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NOS R2–25–161 OF 2009 AND R2–25–163 OF 2009
ROHANA YUSUF J
16 DECEMBER 2011

Administrative Law — Judicial review — Applications for — Review of decision of Registrar of Society's discretionary power to dissolve registered society — Whether respondent required to verify society's dissolution before he cancelled registration of society — Whether respondent undertaken proper verification of society's resolution — Whether respondent's decision should be set aside on grounds of error of law — Whether application ought to be allowed — Whether applicants had locus to be granted remedies sought in applications — Societies Act 1966 s 13 & 13(1)(a)

Civil Procedure — Locus standi — Judicial review — Application for — Whether respondent's decision to cancel registration of society affected applicants' legal rights — Whether constitution of society provided applicant with legitimate expectation — Rules of the High Court 1980 O 53 r 2(4)

Unincorporated Associations — Societies — Registrar of Society — Powers of — Whether registrar required to verify society's dissolution before he cancelled registration of society — Meeting — EGM — Notice of meeting — Failure of notice to state agenda of meeting — Whether failure would render EGM and resolution passed therein to be nullity — Whether registrar's decision should be set aside on grounds of error of law — Societies Act 1966 s 13 & 13(1)(a)

As a result of the change in the state government of Selangor, the Badan Amal Dan Kebajikan Isteri-Isteri Selangor ('BALKIS'), a registered society, held an extraordinary general meeting ('the EGM') and passed a resolution to dissolve itself and transfer its funds to another society known as BAKTI. Thereafter, the Registrar of Society ('the respondent') cancelled the registration of BALKIS pursuant to s 13 of the Societies Act 1966 ('the Act'). The present two applications for judicial review are by two categories of parties, namely the state government of Selangor plus state owned companies, which donated funds to BALKIS (the first category of applicants), and Puan Salbiah bt Tunut, the spouse of the Menteri Besar of Selangor ('Puan Salbiah'). It was the applicants' case that the cancellation of the registration of BALKIS was a nullity for failure to comply with s 13(a) of the Act, which required the respondent to verify a society's dissolution before cancelling its registration. The applicants' allegation

of the respondent's failure to undertake any verification was based on the record of proceedings in a public enquiry conducted by the Select Committee on Competency, Accountability and Transparency ('SELCAT'). The applicants also challenged the respondent's decision on the grounds that the respondent had not undertaken a proper verification on BALKIS's resolution and had not given relevant considerations in the exercise of his duty. The applicants further contended that the notice of meeting requisitioning the EGM was defective because it did not stipulate any agenda. By way of these applications, the applicants sought, inter alia, an order of certiorari to quash the decision of the respondent cancelling the registration of BALKIS and an order of mandamus directing the respondent to cancel its decision and reinstate BALKIS. Leave was granted for judicial review in both applications. The respondent submitted that the manner of undertaking the verification of a society's dissolution was left to its discretion. The respondent also contended that he was satisfied that the requisite quorum was present to dissolve BALKIS.

Held:

(1) The statements made at the SELCAT proceedings should be rejected as they were made after the impugned decision was made. Further, the proceedings before this court concerned a review of the impugned decision and not the SELCAT proceedings (see para 13).

(2) The respondent's statement that the dissolution was made in accordance with the law but that BALKIS was exempted from the laws relating to dissolution seemed ambiguous and confusing. In fact, the respondent's statement did not say in clear and unequivocal terms that the respondent had verified the dissolution as he was required to do under s 13 of the Act. In any case, since the certificate of cancellation of BALKIS showed that BALKIS was cancelled under s 13(a) of the Act, BALKIS could not have been exempted from s 13 of the Act. As such, s 13 of the Act was applicable to the dissolution of BALKIS and the respondent had to conduct a verification before exercising his discretion (see para 16–19).

(3) The failure of the notice of meeting requisitioning the EGM to state the agenda of this meeting would render the EGM and the resolution passed in the meeting to be a nullity. Although this court agreed with the respondent's contention that there was no particular procedure laid out under the law as to how the respondent should conduct the verification of the dissolution, it was amply clear that the verification by the respondent based on a flawed EGM could not be said to be a proper exercise of verification under s 13 of the Act. This was especially so when there was clearly an insufficient quorum and the meeting contained no specific agenda to dissolve the society. It was evidently clear that the verification by the respondent under s 13 of the Act and his decision to cancel

BALKIS had taken into account facts which were erroneous and should be set aside on grounds of error of law (see paras 27–34).

(4) Those applicants who were contributors to BALKIS's fund did not depose in their affidavits how they were aggrieved by the decision of the respondent. Although the respondent's decision was a legal decision that was subject to judicial review, these applicants had not shown how this decision had affected their legal rights so as to bring them within the ambit of a person adversely affected by this decision under O 53 r 2(4) of the Rules of the High Court 1980. In the absence of such evidence, they did not have the required locus to be given the remedies sought in their application (see paras 41–45).

(5) The wording of article 9.3 of the constitution of BALKIS was very clear that a spouse of the Menteri Besar of Selangor had the legitimate expectation to succeed the spouse of the previous Menteri Besar as the Yang Di Pertua of BALKIS, and the assurance that the benefit would not be withdrawn without notice. Hence, Puan Salbiah had the necessary locus to receive the remedies sought for in the application (see paras 46–50).

[Bahasa Malaysia summary

Akibat daripada perubahan dalam kerajaan negeri, Badan Amal Dan Kebajikan Isteri-Isteri Selangor ('BALKIS'), sebuah kesatuan berdaftar, telah mengadakan mesyuarat agung luar biasa ('MALB') dan meluluskan resolusi untuk membubarkannya sendiri dan memindahkan semua dananya kepada kesatuan lain yang dikenali sebagai BAKTI. Berikutan itu, Pendaftar Kesatuan ('responden') telah membatalkan pendaftaran BALKIS menurut s 13 Akta Kesatuan 1966 ('Akta'). Dua permohonan ini untuk semakan kehakiman merupakan dua kategori pihak-pihak, iaitu kerajaan negeri Selangor beserta syarikat milik negeri, yang telah menderma dana kepada BALKIS ('pemohon-pemohon kategori pertama'), dan Puan Salbiah bt Tunut, isteri Menteri Besar Selangor ('Puan Salbiah'). Ia adalah kes pemohon-pemohon bahawa pembatalan pendaftaran BALKIS adalah terbatal kerana gagal mematuhi s 13(a) Akta, yang menghendaki membatalkan pendaftarannya. Dakwaan pemohon tentang kegagalan responden membuat apa-apa pengesahan adalah berdasarkan rekod prosiding dalam siasatan awam yang dijalankan oleh Jawatankuasa Terpilih berhubung Kompetensi, Kebertanggungjawaban dan Ketelusan ('JTKKK') (Select Committee on Competency, Accountability and Transparency ('SELCAT')). Pemohon-pemohon juga mencabar keputusan responden atas alasan bahawa responden tidak membuat pengesahan sewajarnya berhubung resolusi BALKIS dan tidak memberikan pertimbangan relevan dalam melaksanakan kewajipannya. Pemohon-pemohon seterusnya berhujah bahawa notis mesyuarat yang menghendaki MALB diadakan adalah cacat kerana ia tidak menetapkan apa-apa agenda. Melalui permohonan-permohonan tersebut,

pemohon-pemohon memohon, antara lain, perintah certiorari untuk membatalkan keputusan responden untuk pembatalan pendaftaran BALKIS dan perintah mandamus mengarahkan responden untuk membatalkan keputusannya dan mengaktifkan semula BALKIS. Kebenaran telah dibenarkan untuk mengkaji semula kedua-dua permohonan. Responden telah berhujah bahawa cara pengesahan dibuat untuk pembubaran kesatuan adalah terletak atas budi bicaranya. Responden juga berhujah bahawa dia berpuas hati bahawa keperluan korum wujud untuk membubarkan BALKIS.

Diputuskan:

(1) Kenyataan-kenyataan yang dibuat dalam prosiding SELCAT patut ditolak kerana ia dibuat selepas keputusan yang dipersoalkan dibuat. Selanjutnya, prosiding di hadapan mahkamah ini adalah berkaitan semakan semula keputusan yang dipertikaikan dan bukan prosiding (lihat perenggan 13).

(2) Kenyataan responden bahawa pembubaran tersebut telah dibuat menurut undang-undang tetapi bahawa BALKIS telah dikecualikan dari undang-undang berkaitan pembubaran tersebut dianggap taksah dan mengelirukan. Bahkan, kenyataan responden tidak mengatakan dengan jelas dan dalam terma yang tidak berbelah bagi bahawa responden telah mengesahkan pembubaran tersebut sebagaimana yang dikehendaki di bawah s 13 Akta tersebut. Dalam apa keadaan, oleh kerana sijil pembubaran BALKIS menunjukkan yang BALKIS telah dibatalkan di bawah s 13(a) Akta tersebut maka BALKIS tidak boleh dikecualikan daripada s 13 Akta tersebut. Oleh itu, s 13 Akta tersebut adalah terpakai untuk pembubaran BALKIS dan responden hendaklah melakukan pengesahan sebelum menggunakan budi bicaranya (lihat perenggan 16–19).

(3) Kegagalan notis mesyuarat yang memerlukan MALB untuk menyatakan agenda mesyuarat ini akan menyebabkan MALB dan resolusi yang diluluskan dalam mesyuarat itu terbatal. Walaupun mahkamah ini bersetuju dengan hujah responden bahawa tidak ada prosedur tertentu yang dinyatakan di bawah undang-undang berhubung bagaimana responden patut mengendalikan pengesahan pembubaran, adalah cukup jelas bahawa pengesahan itu oleh responden berdasarkan MALB yang tidak sempurna itu tidak boleh dikatakan sebagai cara pengesahan yang wajar di bawah s 13 Akta tersebut. Lebih-lebih lagi apabila adalah jelas tiada kurom yang cukup dan mesyuarat itu tidak mempunyai agenda tertentu untuk membubarkan kesatuan tersebut. Adalah jelas bahawa pengesahan oleh responden di bawah s 13 Akta tersebut dan keputusannya untuk membatalkan BALKIS telah mengambil kira fakta yang salah dan patut diketepikan atas alasan kesilapan undang-undang (lihat perenggan 27–34).

(4) Pemohon-pemohon yang merupakan penyumbang-penyumbang kepada dana BALKIS tidak mendeposkan dalam afidavit mereka bagaimana mereka terkilan dengan keputusan responden. Walaupun keputusan responden adalah keputusan perundangan yang tertakluk kepada semakan kehakiman, pemohon-pemohon tersebut tidak menunjukkan bagaimana ia menjejaskan hak-hak perundangan mereka sehingga meletakkan mereka dalam skop seseorang yang telah terjejas akibat keputusan ini di bawah A 53 k 2(4) Kaedah-Kaeadah Mahkamah Tinggi 1980. Tanpa wujud keterangan sedemikian, mereka tidak mempunyai locus yang dikehendaki untuk diberikan remedi-remedi yang dipohon dalam permohonan mereka (lihat perenggan 41–45).

(5) Perkataan-perkataan dalam perkara 9.3 kepada perlembagaan BALKIS adalah jelas bahawa isteri Menteri Besar Selangor mempunyai jangkaan sah untuk mengatasi isteri bekas Menteri Besar kerana Yang Di Pertua BALKIS, dan jaminan bahawa faedah tidak akan ditarik balik tanpa notis. Justeru itu, Puan Salbiah mempunyai locus yang diperlukan untuk menerima remedi-remedi sebagaimana yang dipohon (lihat perenggan 46–50).]

Notes

For cases on application for judicial review, see 1(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 254–279.

For cases on judicial review, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 5236–5238.

Cases referred to

Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223, CA (refd)

Colgate Palmolive (M) Sdn Bhd v Yap Kok Foong and another appeal [2001] 4 MLJ 97; [2001] 3 CLJ 9, CA (refd)

Council of Civil Service Unions v Minister for Civil Service [1985] AC 374, HL (refd)

Florence Bailes v Dr Ng Jit Leong [1985] 1 MLJ 374 (refd)

Foo Ton Hin v Malaysian Bar & Ors [2007] 8 CLJ 141, HC (refd)

General Electric Co Ltd v Price Commission [1975] ICR 112, CA (refd)

Goh Say Joo & Ors v Dato' Lim Ah Chap [2006] 7 MLJ 571, HC (refd),

Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeals [1996] 1 MLJ 481; [1997] 1 CLJ 665, CA (refd)

Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and others appeals [1997] 3 MLJ 23; [1997] 4 CLJ 253, CA (refd)

Lau Ah Lang & Ors v Chan Huang Seng & Ors [2002] 3 SLR 318, HC (refd)

Law Pang Ching & Ors v Tawau Municipal Council [2009] 3 MLJ 452; [2010] 2 CLJ 821, CA (refd)

Majlis Agama Islam Selangor v Bong Boon Chuen & Ors [2009] 6 MLJ 307, FC (refd)

Members of the Commission of Enquiry on the Video Clip Recording of Images of a Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim [2011] 6 MLJ 490, FC (refd)

National Union of Plantation Workers v Kumpulan Jerai Sdn Bhd, Rengam [2000] 2 MLJ 144; [2000] 1 CLJ 681, CA (refd)

Pahang South Union Omnibus Co Bhd v Minister of Labour and Manpower & Anor [1981] 2 MLJ 199, FC (refd)

Petroliam National Bhd v Nik Ramli Nik Hassan [2004] 2 MLJ 288; [2003] 4 CLJ 625, FC (refd)

Quah Swee Khoon v Sime Darby Bhd [2000] 2 MLJ 600; [2001] 1 CLJ 9, CA (refd)

R Rama Chandran v Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (refd)

Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1992] 2 MLJ 63, SC (refd)

William Jacks & Co (M) Sdn Bhd v S Balasingam [2000] 7 MLJ 1; [1997] 3 CLJ 235, CA (refd)

Young v Ladies Imperial Club [1920] 2 KB 523, CA (refd)

Legislation referred to

Industrial Relations Act 1967 s 9(5)
Rules of the High Court 1980 O 53 r 2(4)
Societies Act 1966 ss 13, 13(1), 13(1)(a), 17, 70

S Selvarajah (Derek Femandes and R Ramanathan with him) (Fernandez & Selvarajah) for the applicants.

Azizah bt Nawawi (Suzana bt Atan and Rahazlan Effendi with her) (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Rohana Yusuf J:

[1] There are two applications for judicial review in this proceeding. In both applications the respondents are the Registrar of Society. In suit No R-25–161 of 2009 the applicants are:

(a) Kerajaan Negeri Selangor;

(b) Puan Sri Salbiah bt Tunut;

(c) Permodalan Negeri Selangor Bhd; and

(d) Kumpulan Darul Ehsan Bhd.

[2] In Suit No R-25–163 of 2009 the applicants are:

(i) Perbadanan Kemajuan Negeri Selangor;

(ii) Worldwide Holdings Bhd;

(iii) Selangor Industrial Corporation Sdn Bhd;

(iv) Selaman Sdn Bhd;

(v) PKNS Infra Bhd; and

(vi) PKNS Engineering & Construction Bhd.

[3] Both applications are heard together as they sought similar reliefs though the grounds of support differ to a small extent. Leave was granted for judicial review in both applications. Briefly the applicants sought the following reliefs, which I hereby reproduce below:

(a) an order of certiorari to quash the decision of the registrar of society ('ROS') dated 11 February 2009 dissolving the Persatuan Badan Amal dan Kebajikan Isteri-Isteri Selangor ('BALKIS') and cancelling the registration of BALKIS effective 11 February 2009;

(b) an order of mandamus directing the respondent to reject the dissolution of BALKIS, to set aside the decision to dissolve BALKIS and cancel its registration, and to reinstate BALKIS;

(c) a declaration that decision of the respondent dated 11 February 2009 dissolving BALKIS and cancelling its registration is illegal, null and void; and

(d) jointly or alternatively, a declaration that the decision of the respondent dated 11 February 2009 dissolving BALKIS and cancelling its registration dated 11 February 2009 is illegal, null and void.

BACKGROUND FACTS

[4] The brief facts leading to these applications are these. BALKIS, an acronym for Badan Amal Dan Kebajikan Isteri-Isteri Selangor, was a registered society since 17 May 1985. The membership of BALKIS was made up of wives of the Selangor State Assemblymen and members of Parliament. On 8 March 2008 the opposition party became the government of the day. As a result of the change in the State Government of Selangor, BALKIS held an extraordinary general meeting on 11 March 2008 and passed a resolution to dissolve itself and transfer its funds to another society known as BAKTI. Thereafter pursuant to s 13 of the Societies Act 1966 ('Act 335') the respondent cancelled the registration of BALKIS which took effect on 11 February 2009.

[5] Under s 13 Act 335, the respondent is empowered to cancel the registration of any society under three main circumstances. Of relevance to these applications is s 13(1)(a) which provides that:

> 13
>
> (1) Subject subsection (2), the Registrar may, in the following cases, cancel the registration of any society registered under section 7 —
>
> (a) upon its dissolution by the society to be verified in such manner as the Registrar in accordance with this Act;
>
> (b) …
>
> (c) …
>
> (d) …

By the above provision therefore, the respondent is required to verify a society's dissolution before cancelling its registration.

[6] The applicants contended that the respondent failed to comply with s 13(1)(a) when he cancelled the registration of BALKIS without undertaking a verification of the dissolution. The alleged failure is premised on the record of proceedings at public enquiry conducted by Select Committee on Competency, Accountability and Transparency ('SELCAT'). The applicants further contended that even if verification was undertaken it was not properly and sufficiently done; the reasons being that:

(a) the respondent had acted in breach of the rules of natural justice, or had breached procedural and substantive fairness and or had failed in his duty to act fairly;

(b) the respondent had asked the wrong questions in the decision making process;

(c) the respondent had taken into account irrelevant considerations;

(d) the respondent had omitted to take into account relevant considerations;

(e) the respondent had acted in an irrational and unreasonable manner within the ambit of the principles laid down in *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223;

(f) the respondent had acted illegally and ultra vires the relevant provisions of Act 355; and

(g) the respondent's acts or omissions were mala fide.

[7] Learned senior federal counsel, Datin Hjh Azizah Hj Nawawi for the respondent submitted that Act 335 does not specify the manner of undertaking verification. Thus, she argued since the Legislature deems it fit to confer such

discretion on the respondent, it should be left to the respondent at his own discretion as to how he should do it. That being the position it was her submission that, the law cannot operate so stringently on the exercise of this discretion, in view of thousands of registered societies found in this country. She relied on *Pahang South Union Omnibus Co Bhd v Minister of Labour and Manpower & Anor* [1981] 2 MLJ 799. In that case Eusoffe Adoolcader J had referred to the manner of verification required under s 9(5) of the Industrial Relations Act 1967 where he held that in exercising verification it is not necessary for each employee's signature to be verified.

JUDICIAL REVIEW OF DISCRETIONARY POWER

[8] At this juncture it is useful first to examine the principle of law governing judicial review of an exercise of a discretionary power conferred under the law. Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years our courts have made considerable inroad into this field of administrative law notably with the view of supervising the exercise of legislative and executive powers on the application of an individual. The Federal Court in *R Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147 which is a landmark decision in the area of administrative law, has held that the decision of inferior tribunal may be reviewed on the ground of 'illegality', 'irrationality', and possibly 'proportionality'. On this basis the courts are permitted to scrutinise a decision not only by the process in which the decision is made but also in its substance. In other words, the courts may go into the merit of the matter. The Federal Court, in *Petroliam National Bhd v Nik Ramli Nik Hassan* [2004] 2 MLJ 288; [2003] 4 CLJ 625, again held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases. Not every case is therefore amenable to the *R Rama Chandran* approach. Further, it was held in that case that a reviewing judge ought not to disturb findings of the Industrial Court unless they were grounded on illegality or plain irrationally.

[9] The Court of Appeal has in a number of cases held that where finding of facts by the Industrial Court are based on the credibility of witnesses, those findings should not be reviewed as in *William Jacks & Co (M) Sdn Bhd v S Balasingam* [2000] 7 MLJ 1; [1997] 3 CLJ 235, *National Union of Plantation Workers v Kumpulan Jerai Sdn Bhd, Rengam* [2000] 2 MLJ 144; [2001] 1 CLJ 681, *Quah Swee Khoon v Sime Darby Bhd* [2000] 2 MLJ 600; [2001] 1 CLJ 9, *Colgate Palmolive (M) Sdn Bhd v Yap Kok Foong and another appeal* [2001] 4 MLJ 97; [2001] 3 CLJ 9. However, there are exceptions to this restrictive principle. Where a tribunal relies on an erroneous fact in arriving at its conclusion it may itself offend against the principle of legality and rationality. Another situation is when a tribunal makes a decision with no evidence to

support the conclusion reached. Decided cases cited above have also clearly established that where the facts do not support the conclusion arrived at by the Industrial Court, or where the findings of the Industrial Court had been arrived at by taking into consideration irrelevant matters or by failure to take into account relevant matters, such findings are always amenable to judicial review. Thus the decision of the respondent here has to be scrutinised in the light of the above legal principles.

WHETHER THERE WAS ANY VERIFICATION

[10] The applicants' allegation of the failure of the respondent to undertake any verification is based on the proceedings of SELCAT on 23 March 2008. At those proceedings, Tairah bt Yusof an officer with respondent was called to testify. In her statements she admitted that no verification was done by the respondent on the dissolution of BALKIS at the 25 March 2008 EGM. She also confirmed that the respondent did not verify who were the attendees at the meeting, but only verified the number of attendees. She further disclosed that the respondent did not verify as to whether there were sufficient ordinary members who attended the EGM. Relying on Tairah bt Yusof's statement at SELCAT proceedings, the applicants contended that the respondent had failed to exercise his duty to undertake any verification under s 13 and hence the cancellation of the registration of BALKIS is a nullity for failure to comply with s 13(1) Act 355.

[11] Having perused through the notes of proceedings of SELCAT, it is true that Tairah bt Yusof did make the alleged statements. However in her affidavit filed in encl 163, she explained that she was confused as to the question raised at the SELCAT proceedings. She added in her affidavit in para 5 that she did make some queries on the dissolution in accordance with the procedure under Act 335.

[12] I am reminded by learned senior federal counsel, that this application is a review of the impugned decision and the court should confine itself to only facts and evidence that were before the decision maker at the time of making the decision and not after that. The impugned decision therefore must only be scrutinised against the facts and evidence before this court and the process that had taken place. In this regards I have considered the decision by Siti Norma SCJ in *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeals* [1996] 1 MLJ 481; [1997] 1 CLJ 665 cited by learned senior federal counsel. I am mindful that the statements made at the SELCAT proceedings are matters that happened after the impugned decision was made. The evidence before SELCAT is a historical account of what had transpired in the decision making process of the respondent. In *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeals* case it was observed that both a court of first

instance and a court of review cannot go beyond what had already been placed before the second appellant (in that case the Industrial Court) for consideration. It was also emphasised by Eusoffe Abdoolcader SCJ in *Pahang South Union Omnibus Co Bhd v Minister of Labour and Manpower & Anor* [1981] 2 MLJ 199 after referring to Lord Denning MR in *General Electric Co Ltd v Price Commission* [1975] ICR 112 that the court in a review proceeding will not itself makes the original findings of facts by taking over the role of a body entrusted by the Parliament to do. The function of the court in review proceeding ought to be concerned simply with the decision making process and in exceptional cases, the merits of the matter and not the facts not placed before it.

[13] Having considered the above, I must therefore reject the statements made by Tairah bt Yusof at the SELCAT proceedings as they were made after the impugned decision. The proceedings before this court are, after all a review, of the impugned decision and not the SELCAT proceedings. Further it must also be born in mind that she was not the person who made the impugned decision and therefore cannot answer for the act of the respondent in these proceedings.

[14] The person who made the impugned decision was the respondent Dato' Hj Md Alias bin Hj Kalil. In his affidavit he retorted that the queries made by Tairah bt Yusof on the dissolution were normal steps taken in such process. He explained the steps taken by his officer in making the decision would include checking the list of members and comparing it to the list of voting members. He was satisfied that the requisite quorum was present to dissolve the society. All in all Dato' Hj Md Alias bin Hj Kalil found that the dissolution of BALKIS was in accordance with the law.

[15] In para 28 of the affidavit he affirmed that '… saya sesungguhnya menyatakan bahawa pihak responden telah mendapati pembubaran BALKIS telah dibuat selaras dengan undang-undang memandangkan BALKIS telah pun mendapat pengecualian daripada sebarang peruntukan pembubaran daripada Menteri Dalam Negeri'. Dato' Hj Md Alias bin Hj Kalil then exhibited in MAK2 a letter signed by him himself sent to the Setiausaha Kehormat, of BALKIS. In that letter dated 19 March 2009 he informed BALKIS that '… Menteri Dalam Negeri telah bersetuju mengecualikan Persatuan Badan Amal Dan Kebajikan Isteri-lsteri Selangor (BALKIS) daripada mana-mana peruntukan dalam Akta Pertubuhan 1966 (Akta 335) bagi tujuan pembubaran BALKIS selaras dengan Seksyen 70 Akta tersebut …'.

[16] I am not clear as to the position taken by the respondent by this statement. It seems ambiguous and somewhat confusing. First, the respondent said that the dissolution was made in accordance with the law. Then he said

that BALKIS was exempted from the provisions of the law relating to dissolution. Assuming the latter is true, then, surely there is no need to dissolve BALKIS in accordance with the law or even to make such an averment. To say that the dissolution was made in accordance with the law that is not applicable is simply meaningless. It is just blowing hot and cold and does not elucidate the situation. Still, the statement does not say in clear and unequivocal terms whether the respondent did in fact verify the dissolution under s 13; a duty which is clearly imposed on the respondent and specifically exempted.

[17] In para 40 of the affidavit he said 'bahawa pihak responden telah mendapati pembubaran BALKIS telah dibuat selaras dengan undang-undang memandangkan BALKIS telah pun mendapat pengecualian danpada sebarang peruntukan pembubaran danpada Menteri Dalam Negeri' Similarly this statement does not shed light on what the respondent need to do in the exercise of his power under s 13. It is rather difficult to comprehend whether it was a result of the exemption that he did not have to do any verification, or that he only needed to do minimal verification as a result. There were attempts though by the respondent to state that there was verification made on the dissolution of BALKIS under the law.

[18] Having examined the documents and certificate of cancellation, and the relevant affidavits the following facts are disclosed. The registration of BALKIS was cancelled 11 February 2009. The letter from the respondent informing BALKIS that the Minister granted exemption to BALKIS from provisions of the laws relating to cancellation and dissolution was sent only on 30 March 2009, which is after BALKIS's registration was cancelled. From these facts I cannot therefore assume that s 13 need not be complied on the basis of the said exemption. Furthermore the letter of exemption by the Minister was never produced for us to appreciate and understand what and when was BALKIS exempted from the law. The evidence of exemption was based on two letters produced and marked in exhibit MAK2. One, signed by the then the respondent Dato' Hj Md Alias and the other by Dasmond Das Michael both dated 19 March 2009 and 20 March 2009 respectively. Both these letters make statement to the effect the Menteri Dalam Negeri agreed to exempt BALKIS from provisions of the laws relating to dissolution, pursuant to s 70 of the Act.

[19] Since the certificate of cancellation of BALKIS shows that BALKIS was cancelled under s 13(1)(a) Act 335, BALKIS could not have been exempted from s 13, otherwise there is no need to invoke that provision at all. That being the position I hold the view that s 13 was applicable to the dissolution of BALKIS. The respondent therefore must conduct verification expected under s 13 Act 335.

A WHETHER THE VERIFICATION WAS PROPERLY DONE

[20] Leaving aside the SELCAT evidence, the other challenge by the applicants was that the respondent had not undertaken a proper verification on BALKIS's resolution and had not given relevant consideration in the exercise of his duty. This is because the requisition of the EGM was questionable due to the following reasons:

B

(a) the notice of meeting in ARO2 which lead to the passing of resolution to dissolve BALKIS does not contain such agenda;

C

(b) there was no sufficient quorum because the attendance list in ARO2 which listed 70 attendances constitutes non-members; and

(c) the attendance list is not the original list because there is no signature against the names to denote their presence.

D

[21] Resulting from an order of discovery made by this court on 29 April 2011 the relevant following documents were disclosed by the respondent vide the affidavit of Dato' Abdul Rahman bin Othman on 12 October 2011. These documents were purportedly used for verifying the dissolution:

E

(i) notice of EGM held on 11 March 2008 in exh ARO1;

(ii) letter of requisition of meeting; list of members requisitioning and notice of EGM in ARO1;

F

(iii) attendance list of members of BALKIS for the EGM on 11 March 2008 — and the resolution passed in ARO2;

(iv) minutes of meeting of EGM dated 11 March 2008 in ARO3; and

(v) list of ordinary members of BALKIS — ARO4.

G

[22] From these documents the unfolded events leading to dissolution of BALKIS are as follows. On 15 February 2008 the Yang Di Pertua of BALKIS received a letter from 22 members requisitioning an extra ordinary general meeting ('EGM') of the society. The letter requisitioning the meeting in ARO1 shows a list of 22 members with each signature corresponding to the respective name. On 25 February 2008, the secretary issued a notice of meeting in accordance with article 12(c). It is pertinent to note that the notice of meeting states venue, time and place of meeting but contains no agenda of the EGM. The content of the said notice is now reproduced below:

H

I

Kepada:

Ahli-Ahli biasa BALKIS

25hb. Februari 2008

Assalamualaikum w.k.t.

YBhg. Puan Sri/Datin Paduka/Datin/ Puan

NOTIS MESYUARAT AGUNG KHAS BALKIS

Adalah dengan segala hormatnya kami merujuk kepda Fasal 12 Perlembagaan BALKIS berhubung perkara seperti tersebut di atas.

Dengan ini dimaklumkan satu Mesyuarat Agung Khas akan diadakan dengan persetujuan daripada ahli-ahli seperti berikut:

Tarikh	Selasa 11hb. Mac 2008
Masa;	10.00 pagi
Tempat	Kompleks Wawasan BALKIS, No. 7 Jalan Kristal 7/64 Seksyen 7, Shah Alam

Sehubungan dengan itu, kami mohon jasa baik daripada ahli-ahli untuk bersama-sama hadir ke Mesyuarat Agung Khas tersebut pada tarikh dan masa seperti yang ditetapkan di atas.

Sekian, terima kasih.

Salam Hormat,

tt

DATIN PON BT. ISHAK

Setiausaha Kehormat

s.k YABhg. Datin Sen Zahra bt Kechik - Yang DiPertua

[23] The applicants contended that this notice is defective because it does not stipulate any agenda. Furthermore a meeting should cite article 15 and not article 12 of the BALKIS's constitution. Article 12 is a general clause to call for an EGM but article 15 is specific provision dealing with dissolution.

[24] No doubt the letter of requisition states the purpose of requisitioning an EGM was to discuss charitable activity of BALKIS. It must be born in my mind that the requisition letter was signed by 22 members. The notice of meeting was to be sent to 100 members of BALKIS. Though the 22 members may be aware that the EGM was to discuss charitable work but the other members would have not a slightest idea of the purpose of convening the EGM. In fact any one in receipt of the notice would be quite clueless on the purpose and agenda of the meeting held on 11 March 2008.

[25] The legal position of a notice of meeting without an agenda is quite clear. I have given due considerations to the authorities cited on this point. In a Singapore case of *Lau Ah Lang & Ors v Chan Huang Seng & Ors* [2002] 3 SLR

318 Judith Prakash J, held that a meeting is invalid at the behest of non-attending members if the notice convening them do not specify with sufficient particularity the matters to be discussed and resolved. In that case since there was no indication that the purpose of the meeting was to remove and replace the trustees, the court found that the members in that case were deprived of their rights to attend and contribute to the discussion or to participate in the voting. In *Florence Bailes v Dr Ng Jit Leong* [1985] 1 MLJ 374 the legal principle found in the English case of *Young v Ladies Imperial Club* [1920] 2 KB 523 was applied. In *Young v Ladies Imperial Club*, the agenda in the notice of meeting listed out topics to be discussed but did not stipulate that there will be discussion on the conduct Mrs Bailes. At the meeting the conduct of Mrs Bailes was discussed under the agenda 'Discipline Staff, Rules and Bye-Laws'. It was held that such discussion was invalid for lack in particularisation in the agenda. The court further observed that it was of utmost importance to state the agenda in view of drastic action to be taken against Mrs Bailes in that case. Taking the queue from *Young v Ladies Imperial Club*, it would appear that matters of drastic nature require a specific agenda before it can be validly discussed and resolved at a meeting.

[26] Text book authorities cited by learned counsel for the applicants on this issue are clear on point. In *The Law and Procedure of Meetings* by Ronald R Pitfield and Percy F Hughes pay emphasis on the importance of a proper agenda in the notice. Learned author I Shearman in *Shackleton on the Law a Practice of Meetings* also viewed the importance of clear statement of business to be transacted at a meeting, he opined that otherwise any decision that ensue cannot be held valid against the non attending members. An EGM which does not comply with rules in convening EGM is null and void following the decision of Heliliah J in *Goh Say Joo & Ors v Dato' Lim Ah Chap* [2006] 7 MLJ 571.

[27] Returning now to the present case, the EGM of 11 August 2008 in the present case in fact led to the dissolution of BALKIS. No doubt nothing can be more drastic and important in any meeting than passing a resolution to dissolve the society. The failure of the notice of meeting in ARO2 to state the agenda of such importance and drastic in nature, in my view would render the EGM and the resolution passed in the meeting a nullity.

QUORUM

[28] The EGM of 11 March 2008, is in my view invalid for yet another reason. First, under article 15(1) of the BALKIS, it is provided that:

> BALKIS tidak boleh dibubarkan kecuali dengan persetujuan sekurang-kurangnya 2/3 dari ahli biasa. Persetujuan tersebut dinyatakan dalam satu mesyuarat agung yang dipanggil oleh sekurang-kurangnya 1/5 dari ahli biasa bagi tujuan tersebut.

There were 100 ordinary members of BALKIS. The required quorum to pass a dissolution resolution following article 15 is therefore 70. The list of attendance in ARO2 produced by the respondent listed out 70 names with no signature on each names. The list also contains non members when compared to the membership list. The attendance list in ARO3 contains at least five persons who are not in the members list.

[29] The alleged discrepancies are highlighted below by learned counsel for the applicants, where the names in the list of attendance are not found in the membership list:

(a) there are two names in the attendance list; Datin Maryam Saidin (No 10), Norzaleha Abd Rahman (No 17) which are not found in the membership list in ARO4;

(b) Datin Loi Yoke Thi (No 51) is not found in the membership list ARO4;

(c) Norliah Nazri (No 22) is not found in the is not found in the membership list (could be mistaken as Datin Norliah Mohd Nazir (No56); and

(d) Datin Noraini (No 40) — when compared to membership list could possibly be Datin Noraini Muhammad (No 53) and Datin Noraini Ahmad (No 51).

[30] There are at least five names in the attendance list that do not correspond with the membership list. With the exclusion of these five names there would be insufficient quorum to pass the dissolution resolution. Thus the purported dissolution cannot be valid due to lack of quorum.

[31] The attendance list containing 70 names does not contain signature of each member in attendance. Such a list cannot be a proof of attendance. Even in the list of requisition letter notice which is far less important than the attendance list contain signature of all the 22 members. An attendance list to the EGM that form the quorum cannot be based on a list with no signature at all. Such list cannot signify attendance of the persons listed. Making it worse it is inconceivable that the list was verified by the ex-Najib Yang Di Pertua of BALKIS, Rahimah Naim who was not event listed in the attendance list as being present at the EGM.

[32] I agree with the contention of learned senior federal counsel that there is no particular procedure laid out under the law as to how the respondent should conduct the verification of the dissolution. It is in the absolute discretion of the respondent. However whatever procedure the respondent adopted, it is amply clear that the verification by the respondent based on flawed EGM cannot be said to be a proper exercise of verification under s 13.

Such exercise was a colourable exercise in the sense pointed out by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374. This is especially so when there clearly was in sufficient quorum and the meeting contain no specific agenda to dissolve the society.

[33] A decision which is based on erroneous facts and do not comply with the requirement of internal procedural rule is a decision which suffers from procedural impropriety and susceptible to judicial review. The EGM to pass a resolution to dissolve a society which culminated in its registration been cancelled is a grave and drastic exercise and cannot be made in total disregard to the requirement of its own constitution. That is why, a public officer such as the respondent has to be more vigilant in his duty to ensure at least the EGM and the resolution passed for dissolution was made in accordance with the rules stipulated under its constitution. It cannot be excused on the ground that there are too many registered societies for the respondent to handle. The exercise of verification done based on unlawful EGM cannot be an exercise of proper discretion as it is based on error of law.

[34] An unlawful meeting, passing a drastic resolution as in this case can lead to abuse. Mindful of this potential abuse in my view, the legislature deems it necessary that verification by the respondent incorporated in the law to form a safeguards or a check on such potential abuse. It is for this reason therefore the function of verification must be taken properly. Otherwise it will render otiose the safeguard intended by the legislature under s 13(1)(a) Act 335. It is evidently clear that the verification by the respondent under s 13 and the decision by the respondent to cancel BALKIS had taken into account facts which are erroneous and should be set aside on grounds of error of law. Having found so, I will now proceed to examine whether the applicants here are entitled to the remedies sought by them in these applications.

LOCUS

[35] These applications were vehemently objected to on the issue of locus both at threshold locus for leave as well at the substantive locus at the hearing of the merits of the applications. Case authorities seem to suggest that substantive locus must only be decided at the end of the case when all facts and circumstances can be taken into account. Eventhough the impugned decisions are made in error of law, the applicants must prove that they are entitled to the remedies they sought for.

[36] The applicants in these two applications broadly speaking constitute two categories of parties viz; the State Government of Selangor plus State owned companies which are instrumentals to which state funds were allocated

to donate funds to BALKIS. The other category is Puan Sri Salbiah bt Tunut, making this application in the capacity as the spouse of Menteri Besar of Selangor.

[37] It is the contention of learned senior federal counsel on behalf the respondents that the applicants do not have necessary substantive locus to be granted with the remedies sought in these applications. Learned senior federal counsel relied on the authority in *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and others appeals* [1997] 3 MLJ 23; [1997] 4 CLJ 253. The Court of Appeal in that case drew a distinction between threshold locus and substantive locus standi. Learned senior federal counsel contended that even though the applicants were held to have threshold locus standi they failed to show that they have substantive locus standi because they failed to show on the affidavits in support, how their legal rights have been affected by the decision of the respondent to cancel the registration of BALKIS. The affidavits deposed on behalf of the applicants according to learned senior federal counsel merely show that have sufficient interest in that:

(a) various activities of BALKIS was supported or sponsored by direct or indirect funding secured from the applicants;

(b) PKNS allowed BALKIS to take possession of two pieces of its land for BALKIS to build Kompleks Wawasan BALKIS;

(c) because of the various donations to BALKIS, the respondents have a legitimate expectation that BALKIS would not dissolve itself;

(d) Puan Sri Salbiah bt Tunut by virtue of her official position as the lawful wife of the present Menteri Besar of Selangor has a legitimate expectation and/or entitlement to hold or assume the office of the Yang Di Pertua of BALKIS by virtue of article 9.3(a) of the Constitution of BALKIS;

(e) since BALKIS was deregistered on 11 February 2009 and does not exist in law, the applicants cannot file any proceedings against BALKIS to set aside its dissolution on 11 March 2008; and

(f) since the dissolution of BALKIS formed the basis of the decision of the respondent, the applicants is challenging the dissolution of BALKIS by questioning the decision of the respondent accepting and adopting the dissolution of BALKIS.

[38] Learned senior federal counsel contended, these are not legal rights to qualify for the reliefs sought as decided in the latest decision of the Federal Court in *Members of the Commission of Enquiry on the Video Clip Recording of Images of a Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim* [2011] 6 MLJ 490 case. Learned counsel for the

applicants contended that leave was granted on an inter parte basis where an overall assessment of facts were made available at the hearing. There is no other ground separate and distinct to negate the applicants' substantive locus. The argument by the respondent now to deny locus on the same ground is therefore circuitous. He further urged this court to follow the approach taken in *Foo Ton Hin v Malaysian Bar & Ors* [2007] 8 CLJ 141 where the issue of threshold and substantive locus standi were fused in view of the facts that all the relevant facts were already before the court granting leave. Thirdly he contended that following the current trend in the law, the test of substantive locus standi is very much a test of merit of the complaint. If there is clear default or abuse shown by the applicants he would definitely have the substantive locus.

[39] I will first deal with the first category of the applicants as listed below. The affidavit of the Menteri Besar of Selangor shows that the applicants are contributors to the fund of BALKIS. According to him the State Government of Selangor made donations and sponsorship through its agencies. The donations and sponsorship made by the applicants are tabulated as shown below:

No	Agency	Contribution (RM)
1.	Perbadanan Kemajuan Negeri Selangor	59,379.60
2.	Permodalan Negeri Selangor Bhd	5,186,588.20
3.	Kumpulan Darul Ehsan Bhd	673,704.89
4.	Worldwide Holdings Bhd	259,085
5.	Selangor Industrial Corp Sdn Bhd	35,000
6.	Selaman Sdn Bhd	30,000
7.	PKNS Infra Bhd	31,000
8.	PKNS Engineering & Construction Bhd	13,000.00
	JUMLAH	6,818,757.69

[40] It was contended on behalf of the applicants that the sole and predominant consideration for annual allocation and contributions made for activities of BALKIS by the State Government was because BALKIS was a registered society under the aegis or auspices of the State Government of Selangor. This gave the confidence and expectation that BALKIS would continue with their activities in line with the objectives in line with its constitution under article 4. Having said that they are contributors to BALKIS's funds the applicants have not shown how the decision to cancel BALKIS affects them either by altering their rights or obligations or depriving them benefits which they had been permitted to enjoy.

[41] If only their commercial or financial interest which are affected, they are

not sufficient to give them locus because their legal interests are not affected. This is also the decision in *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63. Commercial interest alone cannot even be a ground to intervene in a judicial review application as decided in *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2009] 6 MLJ 307.

[42] As contended by the learned senior federal counsel, funds donated is an outright gifts made by the donors. The fund of registered society is protected under the Act. If I may add at this juncture, it must also be for this reason in my view why when a registered society's registration is cancelled under s 13 as in the present case, the property of society vests either in the Director General of Insolvency or a person appointed for purpose of winding up the affairs of the society under s 17 Act 335. The donors in fact can have recourse under s 17 of the Act.

[43] Furthermore these Aapplicants did not depose on affidavits how they are aggrieved by the decision of the Respondent. For this it is useful to examine the test applied by the Federal Court in *The Commission of Enquiry v Tun Ahmad Fairuz* which was contended by learned senior federal counsel to be binding on this court on issue of locus.

[44] In the case of *The Commission of Enquiry v Tun Ahmad Fairuz*'s case, at the outset, the Federal Court made clear that the single issue to be determined in that case was whether, the findings of the Commission is reviewable under O 53 of the RHC. The Federal Court observed that the purpose of O 53 is to quash the legal effect of a particular decision. The Commission, according to the Federal Court does not have legal authority to determine the question affecting the rights of subject. The findings of the Commission are therefore not legal decision within the ambit of O 53 r 2(4) and hence are not amenable to judicial review. Since there was no legal decision, it follows that the legal rights of the subjects are not affected by that decision to entitle them to a judicial review.

[45] Unlike in the present case, the decision by the respondent is a legal decision made under Act 335. Even so the applicants will have to show how this decision has affected their legal rights to bring them within the ambit of a person adversely affected by this decision under O 53 r 2(4) of the RHC. In absence of such evidence I do not agree that they have the required locus to be given the remedies sought in the application.

PUAN SRI SALBIAH TUNUT

[46] I now come to the second applicant Puan Sri Salbiah bt Tunut. She is a

spouse of the present Menteri Besar of Selangor and making her application in that capacity. The constitution of BALKIS in *fasal* 9.3(a) stipulates that:

> Yang Di Pertua ialah Isteri Menteri Besar Selangor tetapi hendaklah disahkan dalam Mesyuarat Agung serta mendapat persetujuan dari pihaknya sendiri. Jika sekiranya beliau menolakkan atau uzur atau Menteri Besar tidak beristeri, sesiapa dari ahli-ahli biasa yang hadir Mesyuarat Agung, layak dipilih bagi jawatan Yang Di Pertua dengan cara undi sulit.

[47] The High Court at leave stage had alluded to the fact that by its own constitution the spouse of the Menteri Besar of Selangor has a legitimate expectation of assuming the position of Yang Di Pertua of BALKIS. There is no denial of this fact by the respondent. The argument of the respondent on this issue is that the second applicant is and has not been made a member of BALKIS at the point when the application to cancel registration was made, to entitle her or qualify her as BALKIS member. Learned senior federal counsel lay out all the provisions and steps before taken person can be a member of BALKIS, general meeting. Thus learned senior federal counsel contended that Puan Sri Salbiah cannot be said to obtain any legitimate expectation to the post of Yang Di Pertua of BALKIS. She supported her contention based on the decision of the Court of Appeal in *Law Pang Ching & Ors v Tawau Municipal Council* [2009] 3 MLJ 452; [2010] 2 CLJ 821. The Court of Appeal in that case applied the test adopted by *Council of Civil Service Unions v Minister for Civil Service* [1985] AC 374 that before claiming such right she must prove that:

(a) she had been permitted by decision maker to enjoy and which she can legitimately expect to be permitted to continue; or

(b) she has received assurance that the benefit or advantage will not be withdrawn without notice or opportunity to advance reasons for contending it should not be withdrawn.

[48] From the facts of the present case in my view the second applicant has the legitimate expectation to succeed the spouse of the previous Menteri Besar as the Yang DiPertua of BALKIS. Though it is true that the constitution of BALKIS requires that her appointment is to be confirmed by the AGM, but since the provision of the constitution in article 9.3 above has made it so clear that the wife of MB to all intent and purposes will be the Yang Di-Pertua of BALKIS, the AGM would also abide by that provision. The wording of article 9.3 is very clear that a spouse of the Menteri Besar of Selangor would have that legitimate expectation as and she has the first right of refusal to become the Yang DiPertua BALKIS.

[49] To this end I would also deal with the two tests propounded in *Council of Civil Service Unions* ('CCSU'). Before a person's right to legitimate

expectation can be obtained either of these two tests must be fulfilled. In my view with such clear provision in the constitution of BALKIS, she would pass the second test enunciated in the *Council of Civil Service Unions* (CCSU). This test requires that she has received assurance that the benefit or advantage will not be withdrawn, without notice. Since the constitution makes clear that the position of Yang DiPertua is to be held by the spouse of the Menteri Besar she is assured by virtue of that Constitution of BALKIS.

[50] It is for this reason that I hold the second applicant has the legitimate expectation to assume as the Yang DiPertua of BALKIS and hence has the necessary locus to receive the remedies sought for in the application.

In conclusion, based on forgoing reasons I hereby allow prayers (2) and (3) of encl 1 in the Suit No R2–25–161 of 2009 only in respect of the second applicant. I make no order to costs.

The application in R2–25–163 of 2009 is dismissed with costs of RM20,000 against all the applicants.

Order accordingly.

Reported by Kohila Nesan